REMARKS

This paper is filed in response to the Office Action dated October 20, 2005. As this paper is filed on January 20, 2006, this paper is timely filed.

I. Status of Amendments

Claims 34, 35, 38, and 55-67 were previously pending. No amendments have been made by this Response. Consequently, claims 34, 35, 38, and 55-67 are presently pending.

II. Response to the October 20 Office Action

Claims 34, 35, 38, 55-58 and 60-67 are rejected under 35 U.S.C. 103 as allegedly unpatentable over Pascal et al. (WO 98/00210) in view of Giacalone, Jr. (U.S. 5,758,875), and claim 59 over Pascal et al. in view of Giacalone Jr. further in view of Okada (U.S. 4,508,345). These rejections are maintained despite the admission, on page 3, that at least one limitation is missing from the combination of references. The rejection is maintained, despite the missing limitation, because the missing limitation is allegedly "an automatic means . . . to replace a manual activity."

To begin, applicants do not agree with the characterization that applicants' previous arguments emphasized only automation. See October 20 Office Action, at 3 ("Applicant alleges Giacalone Jr. does not teach changing a rate of play for a first to a second rate of play *automatically* in response to at least one selected game outcome.") (emphasis in original). While some statements were made regarding automation on page 8 of the Amendment dated September 15, 2005, these comments must be read in context.

For example, applicants' arguments on page 7 focused on the point that "Giacalone Jr. states that *a change in player input* causes a change in the rate of play of the game." September 15 Amendment, at 7 (emphasis in original). Thus, applicants further argued that Giacalone Jr. changed a rate of play in response to *player input* rather than in response to *at least one selected game outcome of the at least one game of chance*. See September 15 Amendment, at 8 ("Giacalone Jr. thus states the changes in rate of play should come about in

accordance with variations in *the player's input*. By contrast, claim 34 recites 'By contrast, claim 34 recites "changing the rate of play to a second permitted rate of play . . . *automatically in response to at least one selected game outcome* [e.g., a winning outcome, see claim 67] of the at least one game of chance', which would make the change insensitive to changes in the speed of the player's input.") (emphasis in original).

Also, applicants argued, in the passage bridging pages 6 and 7, that claim 34 recites a first and a second permitted rate of play. Thus, applicants also argued that Giacalone Jr. did not disclose, teach or suggest this permitted rate of play, but only the actual rate of play. September 15 Amendment, at 8 ("Additionally, Giacalone Jr. states that the change will occur in the *actual* rate of play, while claim 34 recites that the *permitted* rate of play is changed, with the actual rate of play thus being capable of variation up to the permitted rate of play.").

In re Venner is thus not contrary to applicants' arguments above, even according to the reading of that case published in the Manual of Patent Examining Procedure (MPEP). According to MPEP 2144.04, in *in re Venner*:

> Appellant argued that claims to a permanent mold casting apparatus for molding trunk pistons were allowable over the prior art because the claimed invention combined "old permanent-mold structures together with a timer and solenoid which automatically actuates the known pressure valve system to release the inner core after a predetermined time has elapsed." The court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art.

It is not the case here that the prior art showed a player varying a *permitted* level of play (i.e., one relative to which the actual level of play may vary) *in response to at least one selected game outcome* which applicants' claimed subject matter then seeks to automate. These limitations are lacking the cited references of record, in particular Giacalone Jr., in any event. Thus, the rejections should be withdrawn.

In view of the foregoing, it is respectfully submitted that the above application is in condition for allowance, and reconsideration is respectfully requested. If there is any matter that the Examiner would like to discuss, the Examiner is invited to contact the undersigned representative at the telephone number set forth below. The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith to our Deposit Account No. 13-2855, under Order No. 29757/AG32-CIP. A duplicate copy of this paper is enclosed.

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Respectfully submitted,

By _____

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